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Honorable Tre Hargett
Chairman, Tennessee Regulatory Authority
c/o Sharla Dillon, Docket Clerk
460 Robertson Parkway
Nashville, Tennessee 37243-0505

filed electronically in docket office on 09/16/08

Re: *TRA Docket No. 08-00039; Tennessee American Water Company*

Dear Chairman Hargett:

CMA and its counsel were very surprised to receive, more than one week after the briefing deadline, another document filed by the Tennessee American Water Company. CMA submits the Company's latest missive characterized as a "Notice of Filing" is a transparent and bogus excuse to submit yet another filing in a pattern of self-serving briefs supplied after the September 2 deadline. As such, CMA respectfully submits that the Authority should strike from the record such untimely and procedurally improper materials. To do otherwise, CMA submits, would violate due process and constitute material prejudicial error.

CMA is supremely confident that the Authority will thoroughly review the pre-filed testimony and the oral testimony presented during the hearing, along with the post-hearing briefs filed by September 2. CMA's witness Mr. Gorman noted that in a current Illinois matter, the "goodwill" exclusion was not a cost of capital contested issue in a matter for which a proposed order now is circulating. (Tr. Vol. 22, at 2111.) For illustrative purposes and convenience on that point, CMA merely attached exhibits to its post-hearing brief. (See CMA post-hearing brief at 5-6, and collective excerpts at Exhibit 1.) Unquestionably, by the conclusion of this contested case hearing and before the briefing deadline, all parties herein had information that Mr. Gorman referred to the Commonwealth Edison cases pending before the Illinois Commerce Commission.

Tennessee American Water Company was on notice concerning the example provided by Mr. Gorman, but apparently believes it failed to adequately address the issue in its initial 76-page "brief" filed September 2. The Company now seeks at ratepayer's further expense to rehash TAWC's cost of capital testimony, but distorts and mischaracterizes the relevant *C'wealth Edison* finding – *i.e.* the utility's proposal to use a capital structure that included common equity supporting a goodwill asset was rejected.¹ TAWC, in fact, goes on to acknowledge at page 5 of its untimely filing that it simply "disagrees with the treatment of goodwill endorsed by the ICC."

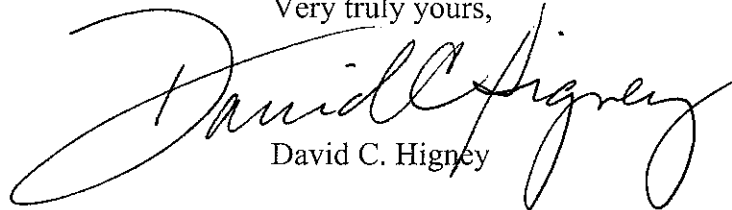
¹ Order dated July 26, 2006, in ICC Docket # 05-0597 (at pp.126, 128) excluding goodwill, which notably was not disturbed in the Order on Rehearing (at p. 59) wherein the agency concluded there was no inconsistency with its prior findings or conclusions concerning the subject of goodwill.

Mr. Gorman timely raised that goodwill should be excluded, both before and during the hearing. TAWC's untimely argument filed September 10 as to this issue should be disregarded.

CMA believes this Authority, mindful of the above, also might note some irony in the Company's position that its most recent filing is founded upon an ostensible "rule of completeness." At the hearing, one may recall, the Company refused to explore Mr. Gorman's testimony about his analysis, calculations and working papers which further undermined TAWC's purported rebuttal testimony and exhibits on the rate of return issue. (Tr. Vol. 22, at 2164-2166.)

The inordinate post-hearing filings made by the Company disrupt a procedure that otherwise would allow the Staff and panel to focus, uninterrupted, on the Authority's analysis of this case. The Company's unsolicited filings are further examples why this utility's rate case expenses are out of proportion when compared to others. The Company's submissions are untimely, violate due process, should not be condoned, and as such the belated pleadings should be stricken from the record.

Very truly yours,



David C. Higney

DCH:jb

cc: Mr. J. Richard Collier
Mr. Michael A. McMahan/ Mr. Rick Hitchcock
Mr. Dale Grimes/ Mr. Ross I. Booher
Mr. Timothy C. Phillips/ Mr. Ryan L. McGehee
Mr. Henry M. Walker
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